

Service Date: July 10, 1996

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

| | | |
|--|---|----------------------|
| IN THE MATTER of the Application |) | UTILITY DIVISION |
| of Citizens Telecommunications Company |) | |
| for a Protective Order for Miscellaneous |) | DOCKET NO. N96.6.102 |
| Nondocket Filings. |) | ORDER NO. 5922 |

PROTECTIVE ORDER

On June 12, 1996, Citizens Telephone Company (Citizens or Company), filed a motion with the Montana Public Service Commission (PSC or Commission) to issue a Protective Order to govern certain information submitted by Citizens in conjunction with various tariff filings, new service filings, or other miscellaneous nondocket filings for which no other protective order would apply. Citizens' request is "generic," in the sense that it is not specific to any formal docket. Citizens requests a Protective Order be issued in the standard format used by the Commission for other such Protective Orders.

Some information submitted by Citizens in conjunction with various tariff filings, other nondocket filings, filings in response to informal information requests and like filings reasonably may be viewed as trade secret and, therefore, protectible pursuant to § 69-3-105(2), MCA, which states: "The Commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory function." For the identified types of filings, granting Citizens' request for a Protective Order is likely to be more efficient than entertaining a request each time trade secrets become a concern.

The Commission considers it appropriate to issue a Protective Order, to provide a procedure for balancing the public's right to know against Citizens' right to nondisclosure of confidential trade secret information. In issuing this Order, the Commission is not deciding or expressing any opinion as to whether the information that might be claimed to be confidential actually is confidential. This Order affords interested parties an opportunity to challenge the proprietary designation.

Based upon the foregoing, the following provisions (Protective Order) shall be in effect with respect to miscellaneous tariff or nondocket information claimed to be trade secret by Citizens when submitted in conjunction with various tariff and miscellaneous filings, other nondocket filings, filings in response to informal information requests by the PSC, and similar informal filings made before the PSC.

1. Proprietary Information. All information, documents, studies, and other materials claimed to be of trade secret, privileged, or confidential nature and submitted by Citizens in conjunction with various tariff and miscellaneous filings will be furnished only pursuant to the terms of this Order and shall be treated by all persons accorded access thereto pursuant to this Order as constituting private, confidential, privileged commercial and financial information, or trade secret (hereinafter referred to as "Proprietary Information") and shall neither be used nor disclosed except in accordance with this Order. All material claimed by Citizens to be Proprietary Information must be clearly marked with an appropriate designation and submitted on yellow paper for ease of identification.

2. Terms of Disclosure to PSC and MCC. All Proprietary Information made available pursuant to this Order shall be given solely to counsel for the PSC and the Montana Consumer Counsel (MCC) or such others within the PSC or MCC as may properly be designated as recipients under the terms of this Order and shall not be used or disclosed except for: (a) the internal purposes of the PSC or MCC; (b) purposes of a proceeding before the PSC; or (c) as otherwise permitted by subsequent order of the PSC. Any member of the PSC, PSC staff, the MCC, and MCC staff may have access to any Proprietary Information made available pursuant to this Order and shall be bound by the terms of this Order. Access to Proprietary Information may be authorized by counsel for the PSC or MCC (or counsel for such other party as may properly acquire access to said information pursuant to the terms of this Order), solely for the above-described purposes, to other persons identified as being their expert consultants.

3. Disclosure to Others -- Petition. Any member of the public or other interested party with proper standing may specially petition the PSC for access to Proprietary Information furnished pursuant to the terms of this Order. A petition must fully identify the petitioner, state the basis, need, and interest of the petitioner, and must demonstrate that the interest directly relates to the

ratemaking, investigatory, or other regulatory function of the PSC. The petitioner shall give notice of any such petition to Citizens, who shall have a period of 14 days to file an objection or response prior to the PSC's ruling. If the petition is granted by the PSC, the petitioner shall be accorded access to the Proprietary Information pursuant to the terms of this Order and shall be bound by its terms.

Prior to disclosure, counsel for the petitioner shall submit a fully executed nondisclosure agreement (Exhibit "A") in the form attached to this Order. Any person designated as an expert consultant by such petitioner, and who is accorded access to Proprietary Information pursuant to the terms of this Order, may not be an officer, director, or employee (except legal counsel) of a party to the proceeding, or an officer, director, employee, or stockholder, or member of an association or corporation of which any such party is a member, subsidiary, or affiliate.

4. Nondisclosure Agreement. Prior to giving qualified persons access to Proprietary Information, counsel or staff for the PSC and MCC and counsel for any person or party seeking the Proprietary Information shall deliver a copy of this Order to such qualified person who shall agree in writing to comply with and be bound by this Order. Proprietary Information shall not be disclosed to any person who has not signed a nondisclosure agreement (Exhibit "A") in the form attached to this Order. The nondisclosure agreement shall require the person to whom disclosure is to be made to read a copy of this Order and certify in writing that he or she has read the same and consents to be bound by its terms. The agreement shall contain the signatory's full name, permanent address, employer, and the name of the interested person or party with whom the signatory is associated. Such agreement shall be delivered to counsel for Citizens and to the PSC.

5. Delivery of Documentation. Where feasible, Proprietary Information will be marked as such and delivered directly to appropriate counsel. In the alternative, Proprietary Information may be made available for inspection and review by appropriate counsel, staff, and experts at a time and place mutually agreed on by Citizens and the parties and qualified interested persons, unless otherwise directed by the PSC.

6. Challenge to Confidentiality. This order establishes a procedure for the expeditious handling of information that Citizens claims is confidential. It is not an agreement or ruling on the confidential nature of any such information. Any party or interested person with proper standing, the MCC, or the PSC on its own motion, may challenge Citizens' claim of confidentiality at any

time. Any such challenge, by petition or motion, must be served upon Citizens and parties, who may then file a response or objection within 14 days thereafter. The response may also request a hearing or oral argument before the PSC, but must include grounds for such request.

(a) In the event that the parties are unable to agree that certain documents, data, information, studies, or other matters constitute Proprietary Information, the entity or person objecting to the proprietary claim shall forthwith submit the matter to the Commission for its review. When the Commission decides the question whether any documents, data, information, studies or other matters constitute Proprietary Information, the Commission will enter an order resolving the issue.

(b) Any party or qualified interested person (as described above) may seek through appropriate pleading to have documents that have been designated as Proprietary Information in accordance with this Order removed from the protective requirements of this Order and placed in the public record. If the confidential nature of this information is so challenged, resolution of the issue shall be made by a hearing examiner or the Commission after consideration of briefs or proceedings *in camera*, which shall be conducted under circumstances such that only those persons duly authorized to have access to such Proprietary Information shall be present. The record of any such *in camera* hearing shall be marked "CONFIDENTIAL--SUBJECT TO A PROTECTIVE ORDER IN DOCKET NO. N96.6.102." It shall be transcribed only upon agreement of all participating parties, or by order of the hearing examiner or the Commission. If transcribed, it shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order through agreement of the parties or pursuant to an order of a hearing examiner or the Commission. Any court reporter or person recording or transcribing the proceedings shall also be required to sign an Exhibit "A."

In the event that a hearing examiner or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, the parties shall not disclose such information or use it in the public record for a period of seven business days thereafter, so that Citizens shall be afforded a reasonable opportunity to seek a stay or other appropriate relief in court.

7. Seal. While in the custody of the PSC, the MCC, or any agency subject to public right to know provisions, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. N96.6.102" and, due to their private nature, shall not be considered as records in the possession or retained within the meaning of any open meeting or access to public record statutes.

8. Use in Pleadings, Briefs, and Other Documents. Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be by citation to title or other nonconfidential description. Any further use or substantive reference to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only upon counsel (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed pursuant to this paragraph.

9. Use in Commission Orders. A hearing examiner or the Commission will attempt to refer to Proprietary Information only in a general or summary form, and to the greatest extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of an order, under seal. This sealed section shall be served only on counsel (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission after signing an Exhibit "A."

10. Summary of Proprietary Information. In all instances when Citizens files material with the Commission pursuant to this order which Citizens considers to be Proprietary Information, Citizens shall concurrently file a brief non-proprietary written summary of the Proprietary Information. In other instances, if deemed necessary by the Commission, Citizens shall prepare a written summary of the Proprietary Information referred to in a decision or order, for placement on the public record.

11. Segregation of Files. All Proprietary Information filed with the Commission shall be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Proprietary Information is released from the restrictions of this Order through agreement of the parties, order of the

Commission, or order of a court having competent jurisdiction. All written Proprietary Information coming into the possession of the MCC under this order may be retained in the MCC office files, but shall be withheld from inspection by others, except for qualified MCC staff, unless released by agreement, order of the Commission, or order of a court.

12. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Proprietary Information by reason of this Order shall neither use nor disclose the Proprietary Information for purposes of business or competition, or any purpose other than those contemplated by this Order, and shall take reasonable precautions to keep the Proprietary Information secure and in accordance with the purposes and intent of this Order.

13. Return. Unless otherwise ordered, Proprietary Information to which a claim of confidentiality is made, and which is either subject to the protective requirements of this Order or is finally determined to be confidential or trade secret, shall be returned by all parties to counsel for Citizens within 30 days after final settlement or conclusion of the proceeding, including judicial review thereof. The foregoing sentence does not apply to the Commission or the MCC or their expert consultants; however, following completion of the proceeding, Citizens may request that Proprietary Information be returned by the MCC and his expert consultants. If Citizens has provided microfiche copies to the PSC, pursuant to PSC Order No. 5354d, Finding of Fact No. 40, as modified in Order No. 5354e, Finding of Fact No. 6 (USWC Docket No. 88.1.2, et al.), Citizens may request that the yellow hard copy be returned by the PSC. Copies of all proprietary information which is made part of the record in any proceeding must remain in the possession of the PSC in hard copy, microfiche or other medium approved by the PSC. The MCC may refuse to return Proprietary Information which is made part of a PSC record and may retain said information in the form necessary or appropriate by the MCC (subject to the terms of this Order).

14. Compliance with PSC Order Nos. 5354d and 5354e. With respect to the Proprietary Information provided pursuant to the terms of this Order, Citizens shall comply with all the requirements and directives of PSC Order No. 5354d, Finding of Fact No. 40, as modified in Order No. 5354e, Finding of Fact No. 6 (USWC Docket No. 88.1.2, et al.).

15. Reservation of Rights. The persons affected by the terms of this Protective Order retain the right to question, challenge, and object to the admissibility (in any proceeding before the

PSC or other appropriate body) of any information furnished under the terms of this Protective Order, on the grounds of relevancy or materiality. This Order shall in no way constitute any waiver of the rights of any interested party to contest any assertion or finding on the right of privacy, confidentiality or privilege, and to appeal any such determination of the Commission.

16. Applicability. This Order shall apply only to information filed with the PSC in conjunction with miscellaneous tariff filings, other nondocket filings, filings in response to informal information requests and like filings, provided that such filings must include a specific request for proprietary treatment. This Order shall be effective for a period of four years beginning July 1, 1996, unless the PSC otherwise orders. A new request may be submitted at the end of the four years, if Citizens intends to seek an extension of the terms of this Order.

17. Amendment or Modification The Commission retains jurisdiction of this matter and may alter or amend the provisions of this Order as it deems appropriate, upon its own motion or the motion of a party or interested person, after reasonable notice.

Done and dated this 1st day of July, 1996, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order issued in Citizens Telecommunications Company PSC Docket No. N96.6.102, dated July 1, 1996, and agree to be bound by its terms and conditions.

Signature

Typed or Printed Name

Employer or Firm

Business Address

Party

Date